

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. Applicants previously submitted an Amendment on December 24, 2008. The Examiner's response was to indicate that, although the previous claims (1-20) were cancelled, the new claims were directed to an invention that was independent and distinct from the invention originally claimed in claims 1-20 and thus refused to examine the newly presented claims, deeming Applicants' Amendment Non-Responsive. Applicants respectfully disagree with the Examiner.

The Examiner asserted reasons for determining that the inventions were independent or distinct include statements that the new independent claims recited "an application server configured to perform..." *Office Action*, pp. 2. Among other inaccuracies, this ignores the fact that claim 30 (and claims depending therefrom) were directed to a methods not independent or distinct from the original claims. Thus Applicants respectfully submit that the Examiner is incorrect to conclude that the newly presented claims represented independent or distinct inventions.

Nonetheless, solely in an effort to facilitate expeditious prosecution of this application, Applicants have amended the claims herein. Claim 20 from the previously presented claim set is retained and new claims 21-39 are presented herein. Applicants respectfully submit that these new claims are not independent or distinct inventions from the previously presented claims and therefore should be examined.

Applicants incorporate by reference their remarks of December 24, 2008 here.

Rejections under 35 USC 101

Claims 1-20 stand rejected under 35 USC 101 as drawn to non-statutory subject matter. Applicants respectfully request reconsideration and withdrawal of these rejections. Applicants note that claims 1-19 have been cancelled herein, rendering rejections directed to these claims moot.

As the Examiner is no doubt aware, currently “the machine-or-transformation test, properly applied, is the governing test for determining patent eligibility of a process under § 101.” *In re Bilski*, 2007-1130, pp. 15, ___F.3d ___ (October 30, 2008). “The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms and article.” *Id* at pp.24 (citations omitted) (emphasis added). Applicants respectfully submit that the claimed invention is directed to statutory subject matter because the claims are either directed to statutory processes tied to a particular machine or directed to statutory apparatuses.

Double Patenting Rejections

Claim 1 has been provisionally rejected on the ground of non-statutory double patenting over claim 1 of co-pending Application Serial No. 09/805,336 (hereinafter the ‘336 application). Claim 1 has been cancelled, rendering the double patenting rejection moot.

Without commenting on the merits of the now mooted objection, Applicants respectfully submit that the newly presented claims clearly do not warrant a double patenting rejection.

Rejections under 35 USC 103

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,918,014 to Robinson (hereinafter “Robinson”). Claims 1-20 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,031,932 to Lipsky (hereinafter “Lipsky”). Applicants respectfully disagree. Applicants note that claims 1-19 have been cancelled herein, rendering rejections directed to these claims moot.

Applicants incorporate by reference their remarks submitted on December 24, 2008 directed to the cited art here. Moreover, Applicants respectfully submit the following regarding claim 20.

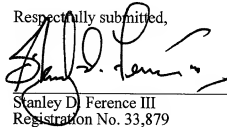
Claim 20 is patentable over Robinson and Lipsky because these references, considered either alone or in any combination, fail to teach or suggest all the limitations of the claim. As a specific example, the cited art fails to teach or suggest “...dynamically determining an optimal advertisement using real time analysis of the sampling data from the experiment...” Claim 20. Robinson and Lipsky simply do not teach or suggest dynamically determining an optimal advertisement with real time analysis. Neither reference contemplates running the short term experiments required for such dynamic determination with real time analysis.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections of Claim 20 in view of Robinson and Lipsky.

Conclusion

Applicants respectfully submit that claims are presently in condition for allowance and earnestly solicit notice to that effect.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", is written over a horizontal line.

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